

AMENDED IN SENATE MAY 21, 2009

SENATE BILL

No. 409

Introduced by Senator Ducheny
(Coauthor: Assembly Member Torres)

February 26, 2009

An act to add Part 5.1 (commencing with Section 14460) to Division 3 of Title 2 of the Government Code, *and to amend Section 185020 of, and to repeal Section 185024 of, the Public Utilities Code*, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 409, as amended, Ducheny. Department of Railroads.

Existing law creates the Department of Transportation in the Business, Transportation and Housing Agency, with various powers and duties relative to the intercity rail passenger program, among other transportation programs. Existing law creates the High-Speed Rail Authority, with various powers and duties relative to development and implementation of a high-speed passenger train system. Existing law creates the Public Utilities Commission, with various powers and duties relative to railroads, among other responsibilities.

This bill would create the Department of Railroads in the Business, Transportation and Housing Agency, and create the positions of director and deputy director within the department, to be appointed by the Governor, as specified. *The director would be subject to Senate confirmation.* The bill would transfer to the department responsibility for various state railroad programs currently administered by the above-referenced agencies. The bill would specify new duties of the department relative to an analysis of the state's freight rail transportation system. The bill would provide that the department shall be the only

state agency eligible to apply for and receive grant and loan funds from the federal government for intercity rail, high-speed rail, or freight rail purposes. *The bill would require the Secretary of Business, Transportation and Housing to convene a joint task force cochaired by the Director of Transportation, the Director of Railroads, and a representative of the Public Utilities Commission for the purpose of resolving issues relative to overlapping jurisdiction of the agencies.*

Existing law provides for the Governor to appoint 5 members of the High-Speed Rail Authority. Existing law provides for the authority to elect a chairperson from among its members and to appoint an executive director.

This bill would revise these provisions by requiring one of these appointees to be the Director of Railroads, who would be subject to Senate confirmation. The Director of Railroads would serve as the chairperson of the authority. The bill would reconstitute the authority as a division of the Department of Railroads, with the chief of the division to be nominated by the Director of Railroads and approved by the authority, and would delete the provision for an executive director.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California has a network of 5,488 miles of Class I railroads
- 4 and 1,409 miles of shortline and terminal railroads. On an annual
- 5 basis, 7,578,465 carloads of freight carrying 177,907,810 tons are
- 6 carried by these railroads. In addition, over 28 million intercity
- 7 and commuter rail passengers traveled in 2006 on tracks owned
- 8 by Class I railroads or on tracks owned by public agencies, over
- 9 which Class I railroads may operate.
- 10 (b) Over 47 percent of the containers used in the nation's foreign
- 11 trade either enter or leave the United States via the Ports of Long
- 12 Beach, Los Angeles, and Oakland. The dominance of California's
- 13 ports is due to (1) the proximity to Asia, (2) the fact that California,
- 14 with a growing population projected to reach 49 million in 2030,
- 15 is itself a major consumer market, and (3) because the railroad
- 16 infrastructure of the state is fully integrated into the national
- 17 railroad network. As a result of being the nation's port of entry,

1 the number of train miles in the state are increasing, resulting in
2 a greater intensity of use of railroad tracks, the reduction in some
3 cases of average speed, and the potential reduction in the
4 performance of passenger rail services in some corridors.

5 (c) California is the largest single state market for intercity
6 passenger rail travel in the country, with the three lines being
7 operated under contract to Amtrak carrying 42 percent of the
8 passengers that travel on the trains that Amtrak operates under
9 contract for California and 12 other states. In addition, the three
10 California corridors—the Pacific Surfliner in southern California,
11 the San Joaquins between the Bay Area/Sacramento and the San
12 Joaquin Valley, and the Capitol Corridor between the Bay Area
13 and Sacramento—carry nearly 20 percent of all Amtrak passengers.

14 (d) The railroad freight industry and the commuter and intercity
15 passenger railroads operating in California employ 15,000 people
16 in the state, with total wages of \$1,042,945,000 in 2005.

17 (e) California voters have recognized the importance of a
18 passenger rail system, including high-speed rail, for improving
19 mobility, addressing greenhouse gas concerns, and contributing
20 to improvements in air quality.

21 (f) It is in the public interest for California to create a
22 Department of Railroads to work cooperatively with private firms
23 and public agencies to ensure that the state's railroad infrastructure
24 meets the commercial needs of California, including the
25 interchange of freight between various modes of surface
26 transportation, the provision of reliable passenger services in
27 commuter and intercity corridors, and the deployment of a
28 cost-effective high-speed train system.

29 SEC. 2. Part 5.1 (commencing with Section 14460) is added
30 to Division 3 of Title 2 of the Government Code, to read:

31
32 **PART 5.1. DEPARTMENT OF RAILROADS**

33
34 **CHAPTER 1. GENERAL**

35
36 14460. There is within the Business, Transportation and
37 Housing Agency a Department of Railroads. An undersecretary
38 of the agency shall be assigned to give attention to rail matters.

39 14460.1. (a) The department is under the control of an
40 executive officer known as the Director of Railroads. The director

1 is appointed by the Governor, subject to confirmation by the
2 Senate, and holds office at the pleasure of the Governor. The annual
3 salary of the director shall be the same as provided for the Director
4 of Transportation pursuant to Chapter 6 (commencing with Section
5 11550) of Part 1. The director shall perform all duties, exercise all
6 powers and jurisdiction, assume and discharge all responsibilities,
7 and carry out and effect all purposes vested by law in the
8 department, except as otherwise expressly provided by law.

9 (b) There shall be within the department the position of Deputy
10 Director of Railroads. The deputy director is appointed by the
11 Governor, upon recommendation of the director, and shall serve
12 at the pleasure of the director. The annual salary shall be fixed by
13 the director in accordance with law. The deputy director shall have
14 the duties that may be assigned to him or her by the director and
15 shall be responsible to the director for the performance of those
16 duties.

17 (c) As used in this part, the following terms shall have the
18 following meanings:

19 (1) "Department" means the Department of Railroads.

20 (2) "Director" means the Director of Railroads.

21 (3) "Secretary" means the Secretary of Business, Transportation
22 and Housing.

23 14460.2. For the purpose of administration, the director shall
24 organize the department with the approval of the Governor and
25 the secretary.

26 14460.3. The department may expend funds appropriated for
27 the administration of laws and programs under the jurisdiction of
28 the department. The expenditure of those funds shall be made in
29 accordance with law in carrying out the work for which the
30 appropriations were made.

31 32 CHAPTER 2. POWERS AND DUTIES 33

34 14461. (a) The department shall be responsible for all of the
35 following programs:

36 (1) The intercity rail program and related matters (Sections
37 14031.6, 14031.7, 14031.8, and 14034 to 14040, inclusive). The
38 department shall assume the duties of the Department of
39 Transportation pursuant to Article 4 (commencing with Section
40 14060), Article 5 (commencing with Section 14070), Article 5.2

1 (commencing with Section 14072), Article 5.4 (commencing with
2 Section 14074), and Article 5.6 (commencing with Section 14076)
3 of Chapter 1 of Part 5.

4 (2) The High-Speed Rail Program (Division 19.5 (commencing
5 with Section 185000) of the Public Utilities Code).

6 (3) The rail goods movement program (Article 9 (commencing
7 with Section 7700) of Chapter 1 of Division 4 of the Public Utilities
8 Code) and the rail portion of the goods movement programs
9 currently administered by the Department of Transportation's
10 Office of Goods Movement and the Business, Transportation and
11 Housing Agency. In connection with goods movement, the
12 department, at least every two years, shall conduct an analysis of
13 the state's freight rail transportation system that considers its
14 relationship to other modes of transportation and to commerce,
15 assesses system performance, identifies future trends, and
16 recommends system improvements. The director shall ensure that
17 the activities associated with this analysis are coordinated with the
18 freight railroad industry, other sectors of the logistics industry,
19 commuter rail operators, applicable, federal agencies, seaports and
20 airports, regional transportation planning agencies, and other
21 relevant public and private entities. The analysis shall identify
22 those improvements where public funding is appropriate and the
23 sources of public funding. Before preparing the analysis, the
24 department shall develop and publish for review a set of
25 performance indicators that it will use in the analysis. The
26 performance indicators shall include, but not be limited to, freight
27 rail transportation system connectivity, safety, and capacity within
28 California.

29 (4) The rail-highway grade crossing and rail-highway grade
30 separation programs (Chapter 6 (commencing with Section 1201)
31 and Chapter 6.5 (commencing with Section 1231) of Part 1 of
32 Division 1 of the Public Utilities Code, and Sections 190, 191, and
33 191.5 of, and Chapter 10 (commencing with Section 2450) of
34 Division 3 of, the Streets and Highways Code).

35 (5) Coordination of regional transportation planning efforts
36 throughout the state relative to rail transportation.

37 (b) Notwithstanding any other provision of law, the department
38 shall succeed to and be vested with all of the duties, powers,
39 purposes, and responsibilities with respect to the programs
40 identified in subdivision (a). Any reference to the Department of

1 Transportation or the Public Utilities Commission with respect to
2 those programs shall be deemed to refer to the department, unless
3 the context otherwise requires.

4 (c) The secretary shall convene a joint task force, cochaired by
5 the director ~~and Director of Transportation~~, *the Director of*
6 *Transportation, and a representative of the Public Utilities*
7 *Commission*, for the purpose of resolving issues between their ~~two~~
8 ~~departments~~ *agencies* relative to overlapping jurisdiction.

9 14462. (a) The department shall be responsible for developing
10 a proposed budget. Any reference to budgetary duties of the
11 Department of Transportation or the Public Utilities Commission
12 relative to a funding source that supports programs that have been
13 transferred to the department pursuant to Section 14461 shall refer
14 to the department. The Department of Transportation or the Public
15 Utilities Commission shall cooperate with the department to ensure
16 a smooth transition. The Department of Transportation shall further
17 cooperate with the department relative to the programming process
18 for transportation funds that may be allocated to transportation
19 projects under the jurisdiction of either department, including, but
20 not limited to, interregional transportation program funds governed
21 by Section 14526 of this code and paragraph (1) of subdivision
22 (a) of Section 164 of the Streets and Highways Code. Funds
23 allocated under subdivision (f) of Section 99315 of the Public
24 Utilities Code shall be allocated to the department consistent with
25 the department's responsibilities.

26 (b) The department shall succeed to the responsibilities of the
27 Department of Transportation with respect to general obligation
28 bond funds made available for rail purposes under the Passenger
29 Rail and Clean Air Bond Act of 1990 (Part 11.5 (commencing
30 with Section 99600) of the Public Utilities Code), the Clean Air
31 and Transportation Improvement Act of 1990 (Chapter 17
32 (commencing with Section 2700) of Division 3 of the Streets and
33 Highways Code), and the Highway Safety, Traffic Reduction, Air
34 Quality, and Port Security Bond Act of 2006 (Chapter 12.49
35 (commencing with Section 8879.20) and Chapter 12.491
36 (commencing with Section 8879.50) of Division 1 of Title 2 of
37 this code).

38 (c) The department shall be the only state agency eligible to
39 apply for and receive grant and loan funds from the federal
40 government or other sources for intercity rail, high-speed rail, or

1 freight rail purposes. Responsibility for grants and loans made
2 available to the state prior to the enactment of this part shall be
3 transferred to the department.

4 14463. The California Transportation Commission shall
5 continue to be responsible for the programming of transportation
6 capital projects pursuant to Chapter 2 (commencing with Section
7 14520) of Part 5.3.

8 14464. The High-Speed Rail Authority shall be a division of
9 the department. ~~The executive director of the authority~~ *chief of the*
10 *division shall be exempt from civil service and shall be nominated*
11 *by the director and approved by the authority. The chief of the*
12 *division shall report to the director. The budget for the high-speed*
13 *rail program overseen by the authority shall be developed by the*
14 *board of the authority in cooperation with the director.*

15 14465. *There shall be within the department a division of*
16 *railroad-highway grade separation and grade crossing protection.*

17 SEC. 3. *Section 185020 of the Public Utilities Code is amended*
18 *to read:*

19 185020. (a) There is in state government a High-Speed Rail
20 Authority.

21 (b) (1) The authority is composed of nine members as follows:

22 (A) ~~Five~~ *Four* members appointed by the Governor.

23 (B) Two members appointed by the Senate Committee on Rules.

24 (C) Two members appointed by the Speaker of the Assembly.

25 (D) *The Director of Railroads, who shall be subject to*
26 *appointment and confirmation pursuant to subdivision (a) of*
27 *Section 14460.1 of the Government Code.*

28 (2) For the purposes of making appointments to the authority,
29 the Governor, the Senate Committee on Rules, and the Speaker of
30 the Assembly shall take into consideration geographical diversity
31 to ensure that all regions of the state are adequately represented.

32 (c) Except as provided in subdivision (d), and until their
33 successors are appointed, members of the authority, *other than the*
34 *Director of Railroads*, shall hold office for terms of four years. A
35 vacancy shall be filled by the appointing power making the original
36 appointment, by appointing a member to serve the remainder of
37 the term.

38 (d) (1) On and after January 1, 2001, the terms of all persons
39 who are then members of the authority shall expire, but those
40 members may continue to serve until they are reappointed or until

1 their successors are appointed. In order to provide for evenly
2 staggered terms, persons appointed or reappointed to the authority
3 after January 1, 2001, shall be appointed to initial terms to expire
4 as follows:

5 (A) Of the five persons appointed by the Governor, one shall
6 be appointed to a term which expires on December 31, 2002, one
7 shall be appointed to a term which expires on December 31, 2003,
8 one shall be appointed to a term which expires on December 31,
9 2004, and two shall be appointed to terms which expires on
10 December 31, 2005.

11 (B) Of the two persons appointed by the Senate Committee on
12 Rules, one shall be appointed to a term which expires on December
13 31, 2002, and one shall be appointed to a term which expires on
14 December 31, 2004.

15 (C) Of the two persons appointed by the Speaker of the
16 Assembly, one shall be appointed to a term which expires on
17 December 31, 2003, and one shall be appointed to a term which
18 expires on December 31, 2005.

19 (2) Following expiration of each of the initial terms provided
20 for in this subdivision, the term shall expire every four years
21 thereafter on December 31.

22 (3) *Paragraphs (1) and (2) shall not apply to the Director of*
23 *Railroads, who shall be initially appointed to a term which expires*
24 *on December 31, 2009, pursuant to subparagraph (A) of paragraph*
25 *(1).*

26 (e) Members of the authority are subject to the Political Reform
27 Act of 1974 (Title 9 (commencing with Section 81000)).

28 ~~(f) From among its members, the authority shall elect a~~
29 ~~chairperson, who shall preside at all meetings of the authority, and~~
30 ~~a vice chairperson to preside in the absence of the chairperson.~~
31 ~~The chairperson shall serve a term of one year.~~ *The Director of*
32 *Railroads shall be the chairperson of the authority and shall*
33 *preside at all meetings.*

34 (g) Five members of the authority constitute a quorum for taking
35 any action by the authority.

36 *SEC. 4. Section 185024 of the Public Utilities Code is repealed.*

37 ~~185024. (a) The authority shall appoint an executive director,~~
38 ~~who shall serve at the pleasure of the authority, to administer the~~
39 ~~affairs of the authority as directed by the authority.~~

1 ~~(b) The executive director is exempt from civil service and shall~~
2 ~~be paid a salary established by the authority and approved by the~~
3 ~~Department of Personnel Administration.~~

4 ~~(c) The executive director may, as authorized by the authority,~~
5 ~~appoint necessary staff to carry out the provisions of this part.~~

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